

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION TWO

DARYL DAVIS,)	No. ED101319
)	
Movant/Appellant,)	Appeal from the St. Louis
)	County Circuit Court
vs.)	
)	Honorable Ellen L. Siwak
STATE OF MISSOURI,)	
)	Filed: February 3, 2015
Respondent.)	

Daryl Davis (Movant) appeals the denial of his Rule 29.15 motion for post-conviction relief. Movant claims the motion court erred by denying his motion without an evidentiary hearing because Movant alleged facts showing that counsel's performance was ineffective for (1) failing to strike an allegedly sleeping juror and request the trial court to voir dire the jury regarding whether it was distracted by the sleeping juror and (2) failing to object, and to request an instruction that the jury disregard, the State's "direct reference" to Movant's right not to testify during closing argument. According to Movant, but for counsel's deficient performance, there is a reasonable probability that he would not have been convicted.

AFFIRMED.

Division Two Holds: The motion court did not clearly err by denying Movant's Rule 29.15 motion without an evidentiary hearing. Movant failed to allege unrefuted facts that counsel rendered ineffective assistance by failing to strike the allegedly sleeping juror or by failing to object to the State's alleged reference during closing argument to Movant's right not to testify.

Opinion by: Philip M. Hess, J.
Sherri B. Sullivan, P.J. and Mary K. Hoff, J. concur.

Attorney for Appellant: Timothy J. Forneris

Attorney for Respondent: Jennifer A. Rodewald

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.
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